

Message Text

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INFO OCT-01 ISO-00 L-02 SEC-01 EB-07 SP-02 PA-01 PRS-01

USIA-06 CIAE-00 INR-07 NSAE-00 INRE-00 /038 R

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TO AMEMBASSY SAN JOSE IMMEDIATE

C O N F I D E N T I A L STATE 120119

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: EXCELSIOR EDITORIAL

REFS: (A) STATE 114202, (B) SAN JOSE 2064, (C) SAN JOSE
2042

1. EMBASSY MAY DRAW ON REFTEL (2) AND ON FOLLOWING AT
YOUR DISCRETION, IN PROPOSED REPLY TO EXCELSIOR EDITORIAL.

A. BASIC PURPOSE OF SEC IS TO PROTECT SHAREHOLDERS, IN
CORPORATIONS WHOSE SHARES ARE PUBLICLY TRADED IN U.S.
ONE BASIC FORM OF SUCH PROTECTION WHICH HAS BEEN MUCH IN
THE NEWS RECENTLY IS SEC'S CONTINUING EFFORT TO ASSURE FULL
DISCLOSURE TO SHAREHOLDERS OF EXACTLY WHAT CORPORATIONS
ARE DOING WITH SHAREHOLDERS' FUNDS AND THEIR METHODS OF
DOING BUSINESS. THUS THRUST AND FORCE OF SEC'S OPERATIONS
ARE BASICLY DOMESTIC. OBVIOUSLY, HOWEVER, THERE WILL BE
OVERSEAS RAMIFICATIONS WHERE, FOR EXAMPLE, IMPROPER USE OF
THE ASSETS OF THE CORPORATION OR OTHER FRAUDULENT ACTIVI-
TIES WHICH ARE REQUIRED TO BE DISCLOSED TOOK PLACE OUTSIDE
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OF US OR WHERE A SHAREHOLDER ACCUSED OF SUCH FRAUDULENT

ACTIVITY SEEKS TO EVADE JUSTICE BY FLEEING THE UNITED STATES.

B. ANOTHER OFF-SHORE EFFECT OF THE SEC'S OPERATIONS IS TO PROTECT FOREIGN SHAREHOLDERS OF CORPORATIONS PUBLICLY TRADED IN THE US TO THE SAME EXTENT AS IT PROTECTS U.S. SHAREHOLDERS.

C. A THIRD OFF-SHORE EFFECT OF RECENT SEC ACTIONS IS TO MAKE MUCH LESS LIKELY - BY INSISTING ON PUBLIC DISCLOSURE - THE TYPE OF IMPROPER ACTIVITIES WHICH RECENTLY HAVE BEEN THE SUBJECT OF EXTENSIVE NEWS COVERAGE IN ANOTHER CENTRAL AMERICAN COUNTRY. THE SEC BELIEVES THAT THIS TYPE OF INFORMATION IS MATERIAL IN THAT IT IMPACTS ON THE INTEGRITY OF MANAGEMENT OF THE CORPORATION, THE QUALITY OF EARNINGS OF THE CORPORATION, IF THEY ARE THE RESULT OF BUSINESS OBTAINED BY ILLEGAL AND SECRET PAYMENTS, AND THE ACCURACY OF THE FINANCIAL STATEMENTS OF THE COMPANY. WE FIND IT QUITE SURPRISING THAT EXCELSIOR - WHICH IN THE PAST HAS RAILED SO MUCH AGAINST THE ACTIVITIES OF MULTINATIONAL CORPORATIONS - SHOULD FIND THIS EFFECT OBJECTIONABLE. TO BE SURE, THIS IS A BY-PRODUCT AND NOT THE MAIN THRUST OF SEC ACTION WHICH, AS STATED ABOVE IS BASICALLY TO PROTECT SHAREHOLDERS AND TO MAINTAIN THE INTEGRITY OF U.S. CAPITAL MARKETS. WE RECOGNIZE THAT THE PRINCIPAL RESPONSIBILITY FOR PREVENTING IMPROPER OR ILLEGAL ACTIVITIES IS THAT OF THE COUNTRY IN WHICH SUCH ACTIVITIES TAKE PLACE. THIS IS SO BOTH IN TERMS OF PROSECUTION AND BY THE ASSURANCE THAT LOCAL LEGISLATION CLEARLY INDICATES WHAT CONDUCT IS FORBIDDEN. THE SEC, MAY, HOWEVER, IN CARRYING OUT ITS OWN FUNCTIONS, FORCE PUBLICATION OF INFORMATION OF USE TO THE AUTHORIZED LAW-ENFORCEMENT AGENCIES OF OTHER COUNTRIES. WE FIND IT ODD THAT EXCELSIOR WOULD SEE THIS AS AN UNFORTUNATE OR SUSPECT RESULT.

D. THE STATEMENT THAT THE SEC GIVES OUT "CONFIDENTIAL INFORMATION", TO NEWSPAPERS IS FALSE. IT WOULD BE A CRIMINAL OFFENSE IN THE UNITED STATES FOR AN SEC OFFICIAL TO DISCLOSE CONFIDENTIAL INFORMATION AND HE WOULD BE PROSECUTED FOR DOING SO. THE SEC DOES COMMUNICATE WITH CONFIDENTIAL

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NEWSPAPER REPORTERS, BOTH US AND NON-US, WHO SEEK INFORMATION, AND WILL PROVIDE THEM WITH INFORMATION THAT CAN BE LEGALLY DISCLOSED. WE ASSUME EXCELSIOR DOES NOT OBJECT TO THAT PRACTICE, EVEN THOUGH ITS REPORTERS HAVE NOT CHOSEN TO AVAIL THEMSELVES OF THAT OPPORTUNITY (AS HAVE REPORTERS OF OTHER COSTA RICAN NEWSPAPERS).

E. EMBASSY MAY WISH TO POINT OUT THE IRONY OF EXCELSIOR'S

BLAST COMING OUT SIMULTANEOUSLY WITH GOCR'S PUBLIC ANNOUNCEMENT OF ITS OFFICIAL REQUEST TO SEC FOR INVESTIGATION OF FRUIT COMPANIES ACTIVITIES IN COSTA RICA.

2. WE ARE PUZZLED AS TO WHETHER EXCELSIOR EDITORIAL IS SIMPLY ONE OF REOCCURRING VESCO-INSPIRED (WE ASSUME) SERIES OR WHETHER IT MAY FORM PART OF THE MORE COMPLEX PATTERN OF EVENTS WHICH SEEMS TO BE EMERGING. WOULD APPRECIATE EMBASSY'S THINKING. IF LATTER, RELATIVE PROS AND CONS OF PROPOSED REPLY WOULD BE QUITE DIFFERENT FROM THOSE OF FORMER CASE.

3. WE HAVE RESERVATIONS ABOUT COUCHING REPLY IN FORM OF A LETTER TO THE EDITOR OF EXCELSIOR AS THIS COULD OPEN US UP TO ENDLESS DEBATE WITH EXCELSIOR HAVING ADVANTAGES OF CONTROLLING THE FORUM. WE, THEREFORE, SUGGEST EMBASSY CONSIDER ALTERNATIVE POSSIBILITY OF ISSUING ONE-TIME PUBLIC STATEMENT FOR USE BY ALL NEWS MEDIA IN COSTA RICA RATHER THAN REPLYING DIRECTLY TO EXCELSIOR. WE ALSO PERCEIVE THE POTENTIAL DANGER THAT OUR REPLY TO EXCELSIOR WILL BE TAKEN AS A REPLY TO FACIO'S RECENT COMMENTS ON THE SEC, THE FRUIT COMPANIES, ETC., WHICH HAD, WE RECOGNIZE, QUITE A DIFFERENT ORIGIN. THIS APPEARS TO US TO BE LEADING TOWARDS A PUBLIC HISSING CONTEST. WE LEAVE THE ANSWER TO YOU, BUT RAISE THE QUESTION. IS THIS MESS NECESSARY. INGERSOLL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PRESS COMMENTS, CORRUPTION, BUSINESS REPUTATION, INVESTORS
Control Number: n/a
Copy: SINGLE
Draft Date: 22 MAY 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE120119
Document Source: CORE
Document Unique ID: 00
Drafter: HLB
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750180-0478
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750526/aaaaaxda.tel
Line Count: 141
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 75 STATE 114202, 75 SAN JOSE 2064
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 08 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <08 SEP 2003 by CunninFX>; APPROVED <14 NOV 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXCELSIOR EDITORIAL
TAGS: PFOR, PGOV, CS
To: SAN JOSE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006